Case 2:06-cr-00693-ADS-AKT Document 34 Filed 09/06/16 Page 1 of 7 PageID #: 102

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. ★ DEC 05 2016 ★ LONG ISLAND OFFICE

FILED IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. ★ SEP 06 2016 ★ LONG ISLAND OFFICE

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 2:06-CR-0693-ADS-1

WINSTON McFADDEN,

Defendant.

## MOTION TO TERMINATE DEFENDANT'S SUPERVISED RELEASE TERM

NOW COMES the Defendant WINSTON McFADDEN, appearing *pro se*, and respectfully motions the Court to terminate the imposed term of supervised release on or after my one year point has been reached: September 17, 2016. This request is enabled pursuant to 18 U.S.C. §3583(e)(1) and Fed R. Crim. P. 32.1(c)(2)(C). No hearing is sought in this matter per Fed R. Crim. P. 32.1(c)(2)(B).

1. This Court sentenced me on December 28, 2007 to a term of 140 months of imprisonment followed by three years of supervised release. (CR 30).[1] This sentence came after I pleaded guilty to one count of Distribution of Cocaine.[2] My supervision began on September 18, 2015.

2. 18 U.S.C. § 3583(e)(1) states that, after considering several factors expressed in 18 U.S.C. § 3553(a),[3] the Court may terminate a term of supervised release and discharge the defendant after serving one year of supervision if it is warranted by the conduct of the defendant and it is in the "interest of justice".[4]

1 "CR" followed by a number references the PACER docket entry of this Court's record.
2 In violation of Title 21 U.S.C. 841(a)(1) & (b)(1)(C).
3 Specifically, the Court is to consider (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7).
4 Title 18 U.S.C.A. §3583(e)(1).

3. Applying the standards [from *Weintraub, infra*], "[e]arly discharge or another form of modification is appropriate to `account for new or unforeseen circumstances' not contemplated at the initial imposition of supervised release." *United States v. Rasco,* No. 88CR817 (CSH), 2000 WL 45438, at *2 (S.D.N.Y. Jan. 19, 2000) (quoting *United States v. Lussier,* 104 F.3d at 36).

4. "The Supreme Court has described supervised release as "the decompression stage" between prison and full release." *United States v. Kappes, Crisp, and Jurgens, Nos. 14-1223, et seq.* (7th Cir. 2015) (Quoting *Johnson v. United States,* 529 U.S. 694, 709 (2000)). As will be seen below, this decompression stage, and the further need for supervision, no longer applies in my case.

5. A court may terminate supervised release early even if the statute of conviction originally required a particular term of supervised release. See, e.g., *United States v. Spinelle*, 41 F.3d 1056, 1069 (6th Cir. 1994); *United States v. Gainer*, 936 F.Supp. 785, 786 (D. Kan. 1996); *United States v. Scott*, 362 F.Supp.2d 982, 984 (N.D. Ill. 2005); *United States v. McClister*, 2008 WL 153771, *2 (D.Utah 2008).

6. Policy consideration detail that "[t]he standards adopted by the Judicial Conference Committee on Criminal Law in March 2003 elaborate on the statutory criteria and recommend evaluation of nine specific factors when deciding whether to approve early termination of supervised release."[5]

7. Further, and fundamental to this pleading, the 2011 amendments to the USSC Guidelines Manual adds commentary to §5D1.2 which specifically encourages courts to consider early termination of supervised release in "appropriate cases." The only example of an appropriate case given by the Commission in note 5 of §5D1.2 is a former addict that completes substance abuse treatment successfully, as I have done, thereby

5 From Probation Monograph 109, *Supervision of Federal Offenders*, (Guide to Judiciary Policy, Vol. 8E, Ch. 3 at 28-29)

reducing his likelihood of recidivism to the community. It is also noteworthy that this policy nullifies the oft-used "exceptional conduct" and "changed circumstances" standard set by the *Lussier* Court in the 2nd Circuit, 19 years ago. *Id.*

8. I have thus far served just under 1 year on supervision, with two years remaining. My request is for a release from remaining supervision on or about my 1 year lapse point.

9. My conduct since release personifies change, cooperation, and absolute compliance. All of the factors this Court must consider under §3553(a) when deciding to terminate a term of supervised release early, in addition to those it may consider, *id.*, weigh in favor of early termination in my case. These factors are discussed below.

**§§ 3553 Factors**

10. I was not fined, nor was I given a judgment of restitution to pay. I was given a Special Assessment of $100 to pay, which I have done. Therefore my entire financial burden associated with this case is fulfilled.

11. I have no needs, educational, medical, or otherwise which could be facilitated from further supervision.[6] Since my release, I have received no infractions or violations of supervision and have complied with every condition thereof. I have cooperated fully from day one with the Bureau of Prisons and the USPO.

12. Additionally, I pose a very low likelihood to commit future crimes. First, I am deeply commuted to crime-free living and to stay out of prison for the rest of my life. The Sentencing commission itself has observed that participation in drug rehabilitation, like the RDAP program in the Bureau of Prisons BOP) reduces recidivism risk, and I am supported daily in this effort by my wife and mother. More on these subjects below.

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6 Satisfying §3553(a)(2)(d).

Case 2:06-cr-00693-ADS-AKT Document 34 Filed 09/06/16 Page 4 of 7 PageID #: 105

13. Second, the effect of early termination, as requested in this motion, reduces my likelihood to recidivate. A recent recidivism study by the AOUSC-OPPS examined a cohort of offenders whose supervision terms expired or were terminated early in fiscal year 2005. The study found that during the 36-month follow-up period, "offenders granted early termination do not pose a greater safety risk to the community" than offenders who successfully served the entire supervised release term imposed by the sentencing court. "In fact, early-term offenders in this study presented a lower risk of recidivism than their full-term counterparts. Not only were early-term offenders charged with a new criminal offense at a lower rate than full-term offenders, they were charged with proportionally fewer felonies…"[7] [8]

14. Policy regarding drug sentences under the Sentencing Commissions Drug Quantity Table (in section U.S.S.G. §2D1.1) has shifted lower on three separate occasions since 2007. Each time, the drug quantity table has lowered the base offense levels of drug crimes. Most recently this has affected many different drug types with the 2014 amendments to this section of the guidelines manual.

15. Though a lower sentence of incarceration cannot compel the Court to reduce a sentence of supervised release, it should take such under consideration. See *United States v. Boston*, 08-10341 (5th Cir. 2011). The commentary to the Sentencing Guidelines section upon which *Boston* relies refers to the possibility of a reduction in supervised release when a former prisoner has filed a Section 3583 motion. [U.S.S.G. §1B1.10 cmt. n.4(B)]

16. The commentary states that even though a district court may not reduce a sentence below time already served in response to a Section 3582 motion, the court may take the fact that 'a defendant may have served a longer term of imprisonment than the court determines would have been appropriate in view of the amended guidelines range' into

7 See James L. Johnson, *Are Early Terminated Offenders a Greater Risk to the Community? NEWS AND VIEWS, Vol. XXXV, No. 2, at 1 (Jan 18, 2010).* Published by AOUSC-OPPS

8 Paragraphs 12-13 satisfy §3553(a)(2)(B)-(D). It's of note that §3583(e)(1) does not set forth §3553(a)(2)(A) as a factor to be considered in requests such as this, as Supervised Release is not considered a part of the "punishment" for my criminal behavior, but for affording adequate protection from the public from me, which is no longer relevant.

Case 2:06-cr-00693-ADS-AKT Document 34 Filed 09/06/16 Page 5 of 7 PageID #: 106

account when considering 'any motion for early termination of a term of supervised release'…". *Id at 3-4.*[9]

17. I ask for and expect no sympathy from this Court for the punishment I received for my actions. I simply point to the years I have now paid for my crime with, and ask the court to grant me the ability to move on from supervision.

**Policy Considerations**

18. In tandem with the Sentencing Guidelines Manual note in §5D1.2, *supra* at ¶7, Probation Monograph 109 informs probation officers that they "**should consider the suitability of early termination for offenders as soon as they are statutorily eligible.**"

19. Further, when making this determination, the 9 general criteria for making a recommendation to the court for early termination are as follows: (1) Stable community reintegration; (2) Progressive strides toward supervision objectives and in compliance with all conditions of supervision; (3) No aggravated role in the offense of conviction, particularly large drug or fraud offenses; (4) No history of violence; (5) No recent arrests or convictions; (6) No recent evidence of alcohol or drug abuse; (7) No recent psychiatric episodes; (8) No identifiable risk to the safety of any identifiable victim; and, (9) No identifiable risk to public safety based on the Risk Prediction Index.

20. I have a very strong support structure which encourages my law-abiding life. My wife, Andrelia, supports me fully each and every day. She, in tandem with my mother, Deborah Mack, make up the base of a support structure that will not stand for a return to criminal behavior and are a remarkable team together.

21. My wife, however, has recently been given a significant promotion by her employer,

9 This policy speaks to satisfying §3553(a)(4) and (a)(5)

AT&T. This promotion required relocation to Albany, Georgia. Georgia is known to be highly resistant to incoming supervised release transfers and I am very concerned with living with my wife there. An early termination next month is not only warranted by my conduct, but is necessary for the bond of support that my wife provides.

22. I am gainfully employed by the MitFadden Group, LLC as a Credit Repair Specialist making steady and reliable income. I have been with the company since the day I was released from halfway house custody.[10] While living in the local halfway house, before my full release from BOP custody, I worked as a front desk clerk and receptionist for a barbershop. I have been productively working since I was released from incarceration.

23. I have not been arrested or committed any violations of supervision since release. Nor have I had any psychiatric episodes. I have completed the rigorous 500-hour Residential Drug Abuse Program while in the custody of the Bureau of Prisons, as well as a halfway hosue-directed TDAP after-care treatment program. I have lived by the tenets of these programs ever since. I have taken and passed all urinalysis tests without fail.

24. Completion of these programs places me squarely in the category of offender specifically targeted by the Sentencing Commission in §5D1.2 (n.5) for early release from supervision. [11]

25. I do not have an aggravated offense, or an aggravated role in the instant offense. Nor do I have a history of violence. I have no psychiatric problems, nor any psychiatric episodes in my past at all.[12]

26. I have no victims at all, and certainly none whose safety would be at risk were my

10 Residence, family, and employment are the detailed examples that speak to criterion (1): stable community Integration.

11 Lack or arrests or violations of supervisory conditions satisfy criteria (2) and (5), respectively. Participation in treatment programs with no errant drug tests satisfies criteria U.S.S.G. §5D1.2 (n. 5) and criterion (6).

12 Criteria (3), (4) and (7), respectively. Regarding a history of violence, policy specifically points out domestic and sexually predatory behavior, none of which are present in my case, no ever will be.

Case 2:06-cr-00693-ADS-AKT Document 34 Filed 09/06/16 Page 7 of 7 PageID #: 108

supervision to be terminated early. And, finally, my risk of recidivism is observably and statistically low, see ¶12-13. [13]

27. Finally, one of the most recent figures from the Administrative Office of the United States Courts estimates that it costs American taxpayers $3,347.41 per year per defendant for probationary supervision.[14] In my case, there are no benefits that could be achieved over the next 2 years to justify such an expense.

## CONCLUSION

Considering the cost of supervision, and based upon the reasons and factors discussed in this motion, I respectfully request that this Court terminate the remainder of my term of supervised release.

Respectfully submitted on this 2 day of September, 2016.

/s/ Winston McFadden

WINSTON McFADDEN

*Pro Se* Defendant, Movant

Request Granted

SO ORDERED

s/ Arthur D. Spatt

ARTHUR D. SPATT, U.S. District Judge

DATED: 12/5/16

13 Satisfying criteria (8) and (9).

14 AOUSC report on the supervision costs v. incarceration costs, published July 18, 2013. (Available at http://www.uscourts.gov/news/2013/07/18/supervision-costs-significantly-less-incarceration-federal-system)